IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

Crl.Rev.Pet.No. 955 of 2007()

CRMP.5545/2006 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

.....

REVN. PETITIONER: PETITIONER

P.M.AFSAR,
PUTHENPARAMBIL, PULIKKUNUKARA, ERUMELI,
KANJIRAPPALLY, KOTTAYAM DISTRICT.

BY ADV. SRI.TITUS MANI
SRI.S.SURAJ (PALATHANATHU)

RESPONDENTS: RESPONDENT & STATE

---

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. N.A. JOSE, S/O. AUGUSTINE, NADUVELLIPPARAMBIL
CHERANALLORE, EDAPPALLY

3. REOLENT HIRE PURCHASE COMPANY LTD.,
K.T.K. ESTATE, KOTHAMANGALAM.

AMENDED THE CAUSE TILE TO CRL. R.P. BY IMPLEADING SRI. N.A. JOSE S/O.AUGUSTINE, NADUVELLIPPARAMBIL, CHERANALLORE, EDAPPALLY AS SECOND RESPONDENT AND REOLENT HIRE PURCHASE COMPANY LTD AS 3RD RESPONDENT AS PER ORDER DATED 8-3-2007 IN CRL.M.A. 2854 OF 2007.

BY ADV. SRI.N.K.MOHANLAL
PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON 25/07/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

* * * * * * * * * * * * * * * * * * * *

Crl.R.P. No. 955 of 2007

* * * * * * * * * * * * * * * * * * * *

Dated, this the 25th day of July 2007

O R D E R

In this Revision filed under Sections 397 and 401 Cr.P.C. petitioner who is the registered owner of a lorry bearing No. KL-12/7182 challenges Annexure -III and IV orders as per which the application for interim custody filed by the petitioner was dismissed and the application for interim custody filed by the 2nd respondent herein was allowed.

2. Assailing the aforesaid orders the learned counsel appearing for the revision petitioner made the following submissions before me:-

The revision petitioner is the hirer in respect of the lorry under Annexure V hire purchase agreement executed with the 3rd respondent financier . At a time when the hire purchase agreement was in force the petitioner had sold the lorry to the 2nd respondent for Rs. 2,62,000/- as per Annexure I agreement dated 3-7-2006 after receiving an advance of Rs. 62,000/-. The 2nd respondent who was to clear the H.P. arrears amounting to Rs. 1,85,000/- within one month defaulted payment. After the expiry of the said period of one month

on 3-8-2006, the 3rd respondent financier began pressing for payment. Sometime in December 2006 the lorry met with an accident resulting in the registration of Crime No. 3906 of 2006 of City Traffic Police Station, Edappally for offences punishable under Sections 279 and 388 I.P.C. The lorry was seized by the police and produced before the J.F.C.M.-II, Ernakulam. On 5-12-2006 the revision petitioner paid the balance hire purchase dues of Rs. 1,85,000/- to the 3rd respondent financier as evidenced by Annexure - II certificate. The 2nd respondent who had stepped into the shoes of the revision petitioner got only the status of a hirer and upon the revision petitioner paying the entire hire purchase, he stepped into the shoes of the financier owner. Therefore, he had a better title than that of the 2nd respondent. The reason given by the Magistrate that the 2nd respondent is the ostensible owner of the lorry in view of the sale by the petitioner in favour of the 2nd respondent is not sustainable. The matter is covered by Sec. 27 of the Sale of Goods Act. The right of the 2nd respondent is only to claim the advance paid and custody should have been given to the revision petitioner.

I am afraid that I cannot agree with the above submissions. It is true that as per Annexure V hire purchase agreement the revision petitioner who was the registered owner of the lorry became the hirer

and the 3rd respondent became the financier in respect of the lorry. But at a time when Annexure V hire purchase agreement was in force, contrary to the prohibition thereunder, the revision petitioner sold the lorry to the 2nd respondent for a sum of Rs. 2,62,000/- as per Annexure I agreement dated 3-7-2006 after receiving an advance of Rs. 62,000/-. As between the revision petitioner and the 2nd respondent there was a valid sale of the lorry within the meaning of the Sale of Goods Act. Even assuming that under Annexure V hire purchase agreement the revision petitioner was only a hirer and not the owner, the sale in favour of the 2nd respondent is protected by Sec. 27 of the Sale of Goods Act. May be the 2nd respondent got only the limited rights of the hirer. But then the very fact that the 3rd respondent financier has terminated the hire purchase agreement as per Annexure II certificate shows that the financier has also ratified the transfer in favour of the 2nd respondent. Going by the preponderance of judicial opinion a contract in the form of Annexure V agreement styled as hire purchase agreement can only be a loan transaction. (**See Tarun Bhargava v. State of Haryana - 2003 (3) KLT 397 (P & H High Court).** I, therefore, agree with the court below that the 2nd respondent who is the ostensible owner in respect of the lorry is entitled to interim custody of the lorry. In any view of

the matter , the revision petitioner who had sold the lorry to the 2nd respondent cannot claim any larger rights viz-a-viz. the 2nd respondent just because the revision petitioner has cleared the hire purchase dues. The remedy, if any, of the revision petitioner is to initiate proceedings against the 2nd respondent for realisation of the monies due from the 2nd respondent .

In the result, this revision which is devoid of any merit is dismissed.

V. RAMKUMAR,
(JUDGE)

ani.